



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 26, 1993

Honorable Allen Place
Chairman
Committee on Criminal Jurisprudence
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 93-42

Re: Whether a home-rule city may
reimburse its officials in a fixed amount for
expenses incurred (ID# 20029)

Dear Representative Place:

You have requested our opinion regarding whether the City of Marshall may grant a "fixed monthly expense allowance," in the amount of \$150.00, to its commissioners. You indicate that, because the city charter requires that "[c]ity [c]ommissioners . . . serve without compensation," an expense allotment that is made "without regard to the actual expenses incurred by each commissioner, and without the necessity of documentation," is at variance with the city charter and therefore invalid.

This office does not construe municipal ordinances, charters, or policies, except to the extent that they may conflict with state or federal statutory or constitutional provisions. *See* Attorney General Opinion JM-846 (1988) at 1. Such inquiries may be answered by the appropriate city attorney. Furthermore, the question of whether a payment designated as an "expense allowance" constitutes, in reality, an invalid attempt to award compensation for services rendered would require the determination of factual issues which cannot be addressed in the opinion process.

You also ask about the applicability of article XVI, section 40, TEXAS CONSTITUTION, which prohibits, with certain exceptions, a single individual from simultaneously holding more than one office of emolument. Under the circumstances you have presented, if the commissioner is a state employee, or if he otherwise receives all or part of his compensation from state funds,¹ he would be barred from accepting any remuneration for his service on the city commission. In that case, it would be necessary to determine whether the monthly expense allowance consists entirely of reimbursement for expenses, or whether a portion of it is in fact a disguised form of compensation. Once again, however, factual determinations would be necessary.

¹For example, a public school teacher or a district attorney.

S U M M A R Y

Unless an individual otherwise receives all or part of his compensation from funds of the state, he is not prohibited from accepting a "fixed monthly expense allowance," without regard to expenses actually incurred, for service on a city commission.

Yours very truly,

A handwritten signature in black ink, appearing to read "Rick Gilpin". The signature is fluid and cursive, with a prominent "R" and "G".

Rick Gilpin
Deputy Chief
Opinion Committee